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2011 FEB 14 P 3:21

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA****CV11 0665**TIANA DENEAN COLEMAN, an
individual, on behalf of herself and all
persons similarly situated,

Plaintiff,

vs.

TARGET CORPORATION; a
Minnesota Corporation,

Defendant.

CASE No. _____

**CLASS AND COLLECTIVE ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200 *et seq.*;
2. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF CAL. LAB. CODE §§ 510, 551, 552, 1194 AND 1198, *et seq.*;
3. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
4. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802; and,
5. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF 29 U.S.C. §§ 201, *et seq.*

DEMAND FOR A JURY TRIAL

1 Plaintiff Tiana Denean Coleman ("PLAINTIFF") on behalf of herself and all other
2 similarly situated current and former employees, allege on information and belief, except for
3 her own acts and knowledge which are based on personal knowledge, the following:

4
5 **THE PARTIES**

6 1. Defendant Target Corporation, a Minnesota corporation, hereinafter also
7 referred to as "TARGET" or "DEFENDANT" was incorporated in 1967 under the laws of
8 Minnesota, with its principal place of business in Minneapolis, Minnesota. At all relevant
9 time mentioned herein, TARGET conducted and continues to conduct substantial and
10 regular business throughout California operating over 150 retail stores within the state.

11 2. Target Corporation is the second largest discount retailer in the United States
12 operating general merchandise and food discount stores formally known as "Target" and
13 "SuperTarget." TARGET also operates in-store amenities, such as Target Café, Target
14 Clinic, Target Pharmacy, and Target Photo, as well as leased or licensed departments,
15 including Optical, Pizza Hut, Portrait Studio, and Starbucks. The company markets its
16 products through its network of distribution centers and third parties, as well as through its
17 online shopping site, Target.com. TARGET also provides credit to qualified guests through
18 its branded proprietary credit cards, including the Target Visa and the Target Card. As of
19 June 2010, TARGET operated 1,740 stores throughout the United States and the District of
20 Columbia.

21 3. To increase profitability, TARGET reduced labor costs and consequently
22 placed the burden on a smaller number of employees to "get the job done." An employer's
23 obligation to pay its employees wages is more than a matter of private concern between the
24 parties. That obligation is founded on a compelling public policy judgment that employees
25 are entitled to work a livable number of hours at a livable wage. In addition, statutes and
26 regulations that compel employers to pay overtime relate to fundamental issues of social
27 welfare worthy of protection. The requirement to pay overtime wages extends beyond the
28 benefits individual workers receive because overtime wages discourage employers from

1 concentrating work in a few overburdened hands and encourage employers to instead hire
2 additional employees. Especially in today's economic climate, the importance of spreading
3 available work to reduce unemployment cannot be overestimated.

4 4. Plaintiff Tiana Denean Coleman ("PLAINTIFF") was employed by Defendant
5 Target Corporation in California as an Executive Team Leader of Guest Experience and as
6 an Executive Team Leader of Softlines from June 2009 to April 2010.

7 5. The positions of Executive Team Leader of Guest Experience and Executive
8 Team Leader of Softlines were represented by DEFENDANT to the PLAINTIFF and the
9 others similarly situated as exempt and salaried positions.

10 6. The job duties that are performed by Executive Team Leaders of Guest
11 Experience primarily involve providing customer service to guests and working as a team
12 leader for the customer service segment of shift laborers who perform the same work. The
13 job duties that are performed by Executive Team Leaders of Softlines primarily involve
14 assisting in the merchandising operation and working as a team leader for the merchandising
15 segment of shift laborers who perform the same work.

16 7. To perform these job duties, the PLAINTIFF and the others similarly situated
17 are part of the production team that produces DEFENDANT's principal product which is
18 sales. PLAINTIFF and others similarly situated do not engage in an administrative or
19 executive role given the constraints placed upon them by company policy and the fact that
20 they do not run the enterprise or a recognized department or subdivision of the enterprise.
21 The circumstances of the job duties performed by the PLAINTIFF and the others similarly
22 situated require them to remain working on the floor of the retail stores throughout their shift
23 each workday in order to work alongside non-exempt employees in accordance with
24 DEFENDANT's strict, uniform and corporate guidelines. As a result, neither the
25 PLAINTIFF nor the others similarly situated primarily performed office or non-manual
26 work. In addition, neither the PLAINTIFF nor the others similarly situated were the actual
27 executives of DEFENDANT or any recognized department or subdivision of
28 DEFENDANT's enterprise. PLAINTIFF and others similarly situated all served as

1 customer service and merchandising shift supervisors who reported to DEFENDANT's store
2 managers ("General Managers") and regional managers. General Managers are the actual
3 "executives" who are in charge of managing each retail store location and any recognized
4 departments or subdivisions therein. Section 541.115 of 29 Code of Federal Regulations
5 ("C.F.R.") explains that employees who perform the same kind of work performed by their
6 subordinates while also carrying on team leadership functions are "working foremen" who
7 must be classified as non-exempt and are entitled to receive overtime compensation and
8 related legal benefits. Therefore, the PLAINTIFF, and all the others similarly situated were
9 "administrators" and/or "executives" in name only and should therefore have been properly
10 classified as non-exempt employees. This Action is brought on behalf of the PLAINTIFF
11 and all those employees of DEFENDANT (the "CALIFORNIA CLASS") in California who
12 worked for DEFENDANT as an Executive Team Leader of Guest Experience and as an
13 Executive Team Leader of Softlines (collectively the "Team Leaders") during the CLASS
14 PERIOD ("CLASS" or "Class Members").

15 8. For DEFENDANT's business, the Class Members functioned as working
16 foremen in DEFENDANT's customer service and merchandising departments. As defined
17 by DEFENDANT's comprehensive corporate policies and procedures, the primary job duty
18 of the Class Members employed by TARGET was and is providing customer service to
19 guests and working as a team leader for the customer service segment of shift laborers who
20 perform the same work and assisting in the merchandising operation and working as a team
21 leader for the merchandising segment of shift laborers who perform the same work in
22 accordance with DEFENDANTS's established specific procedures and protocols which
23 govern and control every aspect of the work performed by the Team Leaders. These
24 standardized procedures mirror the realities of the workplace evidencing a uniformity of
25 work among the Team Leaders and negate any exercise of independent judgment and
26 discretion as to any matter of significance.

27 9. The work schedule for the Team Leaders was set by DEFENDANT.
28 Generally, the Class Members work ten (10) to twelve (12) hours each workday and ten (10)

1 to twenty (20) hours of overtime each workweek.

2 10. DEFENDANT has not established an alternative workweek election for the
3 Team Leaders for ten (10) to twelve (12) hour workdays.

4 11. PLAINTIFF and the other Class Members were not provided with overtime
5 compensation and other benefits required by law as a result of being classified as "exempt"
6 by DEFENDANT.

7 12. PLAINTIFF brings this Class Action on behalf of herself and a California
8 Class consisting of all individuals who are or previously were employed by Defendant
9 Target Corporation as an Executive Team Leader of Guest Experience and/or as an
10 Executive Team Leader of Softlines in California (the "CALIFORNIA CLASS") during the
11 period beginning on the date four (4) years before the filing of this Action and ending on the
12 date as determined by the Court (the "CALIFORNIA CLASS PERIOD").

13 13. As a matter of company policy, practice, and procedure, DEFENDANT
14 has unlawfully, unfairly and/or deceptively classified every Team Leader as exempt based
15 on job title alone, failed to pay the required overtime compensation and otherwise failed to
16 comply with all applicable labor laws with respect to these Team Leaders.

17 14. The agents, servants, and/or employees of DEFENDANT and each of
18 them acting on behalf of DEFENDANT acted within the course and scope of his, her or its
19 authority as the agent, servant, and/or employee of DEFENDANT, and personally
20 participated in the conduct alleged herein on behalf of DEFENDANT with respect to the
21 conduct alleged herein. Consequently, DEFENDANT is jointly and severally liable to the
22 PLAINTIFF and the other members of the CALIFORNIA CLASS, for the loss sustained as
23 a proximate result of the conduct of DEFENDANT's agents, servants, and/or employees.

24
25 **THE CONDUCT**

26 15. The primary job duty required of the Class Members as defined by
27 DEFENDANT is executed by the Class Members through the performance of non-exempt
28 labor within a defined skill set.

16. Although the PLAINTIFF and the other Class Members primarily performed non-exempt labor, DEFENDANT instituted a blanket classification policy, practice and procedure by which all of the Class Members were classified as exempt from overtime compensation, meal breaks and rest breaks. By reason of this uniform exemption practice, policy and procedure applicable to the PLAINTIFF and the other Class Members who performed this non-exempt labor, DEFENDANT committed acts of unfair competition in violation of the California Unfair Competition law, Cal. Bus. & Prof. Code § 17200 (the "UCL"), by engaging in a company-wide policy, practice and procedure which failed to properly classify the PLAINTIFF and the other Class Members and thereby failed to pay them overtime wages for documented overtime hours worked and provide them with meal and rest breaks. The proper classification of these employees is DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT failed to pay all required overtime compensation for work performed by the members of the CALIFORNIA CLASS and violated the California Labor Code and regulations promulgated thereunder as herein alleged. In addition, DEFENDANT failed to provide all of the legally required meal and rest breaks to the PLAINTIFF and the other Class Members as required by the applicable Wage Order and Labor Code. During the CLASS PERIOD, DEFENDANT did not have a policy or practice which provided meal and rest breaks to the PLAINTIFF and the other Class Members. As a result, DEFENDANT's failure to provide the PLAINTIFF and the CALIFORNIA CLASS with all the legally required meal and rest breaks is evidenced by DEFENDANT's business records which contain no record of these breaks. DEFENDANT also engaged in a common course of failing to reimburse the PLAINTIFF and the other Class Members for expenses incurred in the discharge of their job duties. TARGET systematically insisted that all the Class Members purchase TARGET's branded merchandise from its online employee "Bullseye" shop the wearing of which was necessary to fulfill the employees' job duties. The Bullseye shop clothing was only purchased for wearing at work for DEFENDANT. As a result, the Class Members patronized DEFENDANT's online shop in the purchase of company

1 clothing for work purposes only. Therefore, the Class Members sustained expenses and
2 other losses as a result of TARGET's uniform policy to require employees to use its
3 employee online shop to purchase company clothing for work purposes. TARGET's
4 business expense policy and practice is evidenced by DEFENDANT's employee online
5 shop. TARGET also failed to reimburse the PLAINTIFF and the other Class Members for
6 personal vehicle usage and the expense of gas which was required by DEFENDANT to
7 travel to and from DEFENDANT's retail store locations for training.

8 17. DEFENDANT, as a matter of law, has the burden of proving that (a)
9 employees are properly classified as exempt and that (b) DEFENDANT otherwise complies
10 with applicable laws. Other than the initial classification of the PLAINTIFF and the other
11 Class Members as exempt from being paid overtime based on job title alone, DEFENDANT
12 had no business policy, practice, or procedure to ensure that the PLAINTIFF and the other
13 Class Members were properly classified as exempt, and in fact, as a matter of corporate
14 policy erroneously and unilaterally classified all the Class Members as exempt based on job
15 title alone.

16 18. During their employment with DEFENDANT, the PLAINTIFF and the
17 other Class Members, primarily performed non-exempt job duties, but were nevertheless
18 classified by DEFENDANT as exempt from overtime pay and worked more than eight (8)
19 hours a day, forty (40) hours a week, and/or on the seventh (7th) consecutive day of a
20 workweek.

21 19. PLAINTIFF and the other Class Members employed by DEFENDANT were
22 not primarily engaged in work of a type that was or now is performed at the level of the
23 policy or management of DEFENDANT. PLAINTIFF and the other Class Members
24 employed by DEFENDANT were also not primarily engaged in work of a type that was or
25 now is directly related to the management or general business operations of the employer's
26 customers, when giving these words a fair but narrow construction. PLAINTIFF and the
27 other Class Members employed by DEFENDANT were also not primarily engaged in work
28 requiring knowledge of an advanced type in a field or science or learning customarily

1 acquired by a prolonged course of specialized intellectual instruction and study, but rather
2 their work primarily involves the performance of routine mental, manual, and/or physical
3 processes. PLAINTIFF and the other Class Members employed by DEFENDANT were also
4 not primarily engaged in work that is predominantly intellectual and varied in character, but
5 rather is routine mental, manual, mechanical, and/or physical work that is of such character
6 that the output produced or the result accomplished can be standardized in relation to a given
7 period of time. The work of a Team Leader of DEFENDANT was work wherein the
8 PLAINTIFF and the members of the CALIFORNIA CLASS were primarily engaged in the
9 day-to-day production activity of TARGET to provide customer service to guests and work
10 as a team leader for the customer service segment of shift laborers who perform the same
11 work and assist in the merchandising operation and work as a team leader for the
12 merchandising segment of shift laborers who perform the same work in strict accordance
13 with the protocols, policies and operations established by DEFENDANT.

14 20. The fact that the work of the Class Members may have involved work using a
15 specialized skill set or technical abilities in a defined technical area does not mean that the
16 PLAINTIFF or the other Team Leaders employed by DEFENDANT are exempt from
17 overtime wages. Indeed, the exercise of discretion and independent judgment must be more
18 than the use of a highly technical skill set described in a manual or other sources. The work
19 that the PLAINTIFF and the other Class Members employed by DEFENDANT was and are
20 primarily engaged in performing day-to-day customer service and merchandising activities
21 which is work that is required to be performed as part of the day-to-day-business of
22 DEFENDANT. As a result, the PLAINTIFF and the other Class Members employed by
23 DEFENDANT were primarily engaged in work that falls on the production/non-exempt
24 administration side of the administrative/production worker dichotomy and therefore should
25 have been properly classified as non-exempt employees.

26 21. Class Members are classified as exempt from California overtime and related
27 laws by DEFENDANT, however, these employees do not have managerial duties or
28 authority and were not the actual executives of DEFENDANT or any recognized department

1 or subdivision of DEFENDANT's enterprise and are therefore executives in name only.
2 Class Members perform these ongoing day-to-day non-exempt activities because they have a
3 minimal role in supervising and managing non-exempt, hourly retail store employees.
4 Furthermore, the Class Members are tightly controlled by company policy and by their
5 managers, do not exercise discretion or independent judgment as to matters of significance,
6 and their job duties are not directly related to DEFENDANT's management policies or
7 general business operation.

8 22. PLAINTIFF and all members of the CALIFORNIA CLASS are and were
9 uniformly classified and treated by DEFENDANT as exempt at the time of hire and
10 thereafter, DEFENDANT failed to take the proper steps to determine whether the
11 PLAINTIFF, and the members of the CALIFORNIA CLASS, were properly classified under
12 the applicable Industrial Welfare Commission Wage Order (Wage Order 1-2001 and/or
13 Wage Order 4-2001) and Cal. Lab. Code §§ 510 *et seq.* as exempt from applicable
14 California labor laws. Since DEFENDANT affirmatively and wilfully misclassified the
15 PLAINTIFF and the members of the CALIFORNIA CLASS in compliance with California
16 labor laws, DEFENDANT's practices violated and continue to violate California law. In
17 addition, DEFENDANT acted deceptively by falsely and fraudulently telling the
18 PLAINTIFF and each member of the CALIFORNIA CLASS that they were exempt from
19 overtime pay when DEFENDANT knew or should have known that this statement was false
20 and not based on known facts. DEFENDANT also acted unfairly by violating the California
21 labor laws, and as a result of this policy and practice, DEFENDANT also violated the UCL.
22 In doing so, DEFENDANT cheated the competition by paying the CALIFORNIA CLASS
23 less than the amount competitors paid who complied with the law and cheated the
24 CALIFORNIA CLASS by not paying them in accordance with California law.

25 23. DEFENDANT also failed to provide and still fails to provide the PLAINTIFF
26 and the other Class Members with a wage statement in writing that accurately sets forth
27 gross wages earned, all applicable hourly rates in effect during the pay period and the
28 corresponding number of hours worked at each hourly rate by the PLAINTIFF and the other

1 Class Members. This conduct violates California Labor Code § 226. The pay stub also does
2 not accurately display anywhere the PLAINTIFF's and the other Class Members' overtime
3 hours and applicable rates of overtime pay for the pay period.

4 24. By reason of this uniform conduct applicable to the PLAINTIFF and all the
5 CALIFORNIA CLASS members, DEFENDANT committed acts of unfair competition in
6 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code § 17200 (the
7 "UCL"), by engaging in a company-wide policy and procedure which failed to correctly
8 classify the PLAINTIFF and the CALIFORNIA CLASS of Class Members as non-exempt.
9 The proper classification of these employees is DEFENDANT's burden. As a result of
10 DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT
11 failed to properly calculate and/or pay all required overtime compensation for work
12 performed by the members of the CALIFORNIA CLASS and violated the applicable Wage
13 Order, the California Labor Code and the regulations promulgated thereunder as herein
14 alleged.

15 16 THE UCL REMEDIES

17 25. As a result of DEFENDANT's UCL violation, the PLAINTIFF, on behalf
18 of herself and the CALIFORNIA CLASS, seeks restitutionary disgorgement of
19 DEFENDANT's ill-gotten gains into a fluid fund in order to provide restitution of all the
20 money that DEFENDANT was required by law to pay, but failed to pay, to the PLAINTIFF
21 and all the other CALIFORNIA CLASS members. PLAINTIFF also seeks all other relief
22 available to her and the other Class Members located in California under California law.
23 PLAINTIFF also seeks declaratory relief finding that the employment practices and policies
24 of DEFENDANT violate California law.

25 26 THE CALIFORNIA CLASS

27 26. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
28 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200 *et seq.* (the

1 "UCL") as a Class Action, pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), on behalf of a
2 California Class, defined as all individuals who are or previously were employed by
3 Defendant Target Corporation as a Team Leader as hereinabove defined in California during
4 the period beginning on the date four (4) years before the filing of this Action and ending on
5 the date as determined by the Court ("CALIFORNIA CLASS").

6 27. To the extent equitable tolling operates to toll claims by the CALIFORNIA
7 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
8 accordingly.

9 28. DEFENDANT, as a matter of corporate policy, practice and procedure,
10 and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC")
11 Wage Order Requirements, and the applicable provisions of California law, intentionally,
12 knowingly, and wilfully, engaged in a practice whereby DEFENDANT unfairly, unlawfully,
13 and deceptively instituted a practice to ensure that the employees employed in a Team
14 Leader position were not properly classified as non-exempt from the requirements of
15 California Labor Code §§ 510, *et seq.*

16 29. DEFENDANT has the burden of proof that each and every employee is
17 properly classified as exempt from the requirements of the Cal. Lab. Code §§ 510, *et seq.*
18 DEFENDANT, however, as a matter of uniform and systematic policy and procedure had in
19 place during the CALIFORNIA CLASS PERIOD and still has in place a policy and practice
20 that misclassifies the CALIFORNIA CLASS members as exempt. DEFENDANT's uniform
21 policy and practice in place at all times during the CALIFORNIA CLASS PERIOD and
22 currently in place is to systematically classify each and every CALIFORNIA CLASS
23 member as exempt from the requirements of the California Labor Code §§ 510, *et seq.* This
24 common business practice applicable to each and every CALIFORNIA CLASS member can
25 be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal.
26 Business & Professions Code §§ 17200 *et seq.* (the "UCL") as causation, damages, and
27 reliance are not elements of this claim.

28 30. At no time before, during or after the PLAINTIFF's employment with

1 DEFENDANT was any Class Member reclassified as non-exempt from the applicable
2 requirements of California Labor Code §§ 510, *et seq.* after each CALIFORNIA CLASS
3 member was initially, uniformly, and systematically classified as exempt upon being hired.

4 31. Any individual declarations of any employees offered at this time purporting
5 to indicate that one or more Team Leader may have been properly classified is of no force or
6 affect absent contemporaneous evidence that DEFENDANT's uniform system did not
7 misclassify the PLAINTIFF and the other Team Leaders as exempt pursuant to Cal. Lab.
8 Code §§ 510, *et seq.* Absent proof of such a contemporaneous system, DEFENDANT's
9 business practice is uniformly unlawful, unfair and/or deceptive under the UCL and may be
10 so adjudicated on a class-wide basis. As a result of the UCL violations, the PLAINTIFF and
11 the CALIFORNIA CLASS members are entitled to compel DEFENDANT to provide
12 restitutionary disgorgement of their ill-gotten gains into a fluid fund in order to restitute
13 these funds to the PLAINTIFF and the CALIFORNIA CLASS members according to proof.

14 32. The CALIFORNIA CLASS is so numerous that joinder of all Class Members
15 is impracticable.

16 33. Common questions of law and fact exist as to members of the CALIFORNIA
17 CLASS, including, but not limited, to the following:

- 18 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof.
19 Code §§ 17200 *et seq.* (the "UCL"), by unlawfully, unfairly and/or
20 deceptively having in place company policies, practices and procedures
21 that uniformly misclassified the PLAINTIFF and the members of the
22 CALIFORNIA CLASS as exempt;
- 23 (b) Committing an act of unfair competition in violation of the UCL, by
24 unlawfully, unfairly, and/or deceptively failing to have in place a
25 company policy, practice and procedure that accurately determined the
26 amount of working time spent by the PLAINTIFF and the members of
27 the CALIFORNIA CLASS performing non-exempt labor;
- 28 (c) Committing an act of unfair competition in violation of the UCL, by

1 having in place a company policy, practice and procedure that failed to
2 reclassify as non-exempt those members of the CALIFORNIA CLASS
3 whose actual job duties are primarily comprised of non-exempt job
4 functions;

5 (d) Committing an act of unfair competition in violation of the UCL, by
6 violating Cal. Lab. Code §§ 510, *et seq.* by failing to pay the correct
7 overtime pay to the PLAINTIFF and the members of the
8 CALIFORNIA CLASS who were improperly classified as exempt, and
9 retaining the unpaid overtime to the benefit of DEFENDANT;

10 (e) Committing an act of unfair competition in violation of the UCL, by
11 failing to provide all mandatory meal and/or rest periods to the
12 PLAINTIFF and the Class Members;

13 (f) Committing an act of unfair competition in violation of the UCL, by
14 violating Cal. Lab. Code § 2802 by failing to reimburse the
15 PLAINTIFF and the members of the CALIFORNIA CLASS with
16 necessary expenses incurred in the discharge of their job duties for
17 DEFENDANT;

18 (g) Committing an act of unfair competition in violation of the UCL, by
19 violating Cal. Lab. Code § 226 by failing to provide the PLAINTIFF
20 and the members of the CALIFORNIA CLASS with an accurate
21 itemized statement in writing showing the gross wages earned, the net
22 wages earned, all applicable hourly rates in effect during the pay period
23 and the corresponding number of hours worked at each hourly rate by
24 the employee; and,

25 (h) Committing an act of unfair competition in violation of the UCL, by
26 violating the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et*
27 *seq.*, by failing to pay the correct overtime wages to the PLAINTIFF
28 and the members of the CALIFORNIA CLASS who were improperly

1 classified as exempt as legally required by the FLSA, and retaining the
2 unpaid overtime to the benefit of DEFENDANT.

3 34. This Class Action meets the statutory prerequisites for the maintenance of a
4 Class Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

- 5 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
6 that the joinder of all such persons is impracticable and the disposition
7 of their claims as a class will benefit the parties and the Court;
- 8 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are
9 raised in this Complaint are common to the CALIFORNIA CLASS will
10 apply uniformly to every member of the CALIFORNIA CLASS;
- 11 (c) The claims of the representative PLAINTIFF are typical of the claims
12 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all
13 the other members of the CALIFORNIA CLASS, was initially
14 classified as exempt upon hiring based on the defined corporate policies
15 and practices and labored under DEFENDANT's systematic procedure
16 that failed to properly classify the PLAINTIFF and the members of the
17 CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a
18 result of DEFENDANT's employment practices. PLAINTIFF and the
19 members of the CALIFORNIA CLASS were and are similarly or
20 identically harmed by the same unlawful, deceptive, unfair and
21 pervasive pattern of misconduct engaged in by DEFENDANT by
22 deceptively advising all the Class Members that they were exempt from
23 overtime wages based on the defined corporate policies and practices,
24 and unfairly failing to pay overtime to these employees who were
25 improperly classified as exempt; and,
- 26 (d) The representative PLAINTIFF will fairly and adequately represent and
27 protect the interest of the CALIFORNIA CLASS, and have retained
28 counsel who are competent and experienced in Class Action litigation.

1 There are no material conflicts between the claims of the representative
2 PLAINTIFF and the members of the CALIFORNIA CLASS that would
3 make class certification inappropriate. Counsel for the CALIFORNIA
4 CLASS will vigorously assert the claims of all employees in the
5 CALIFORNIA CLASS.

6 35. In addition to meeting the statutory prerequisites to a Class Action, this Action
7 is properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3),
8 in that:

9 (a) Without class certification and determination of declaratory, statutory and
10 other legal questions within the class format, prosecution of separate actions
11 by individual members of the CALIFORNIA CLASS will create the risk of:

12 1) Inconsistent or varying adjudications with respect to individual
13 members of the CALIFORNIA CLASS which would establish
14 incompatible standards of conduct for the parties opposing the
15 CALIFORNIA CLASS; and/or,

16 2) Adjudication with respect to individual members of the
17 CALIFORNIA CLASS which would as a practical matter be
18 dispositive of interests of the other members not party to the
19 adjudication or substantially impair or impede their ability to
20 protect their interests;

21 (b) The parties opposing the CALIFORNIA CLASS have acted or refused
22 to act on grounds generally applicable to the CALIFORNIA CLASS,
23 making appropriate class-wide relief with respect to the CALIFORNIA
24 CLASS as a whole in that DEFENDANT uniformly classified and
25 treated the Class Members as exempt and, thereafter, uniformly failed
26 to take proper steps to determine whether the Class Members were
27 properly classified as exempt, and thereby denied these employees
28 overtime wages as required by law;

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim the PLAINTIFF seeks declaratory relief holding that DEFENDANT's policy and practices constitute unfair competition, along with incidental equitable relief as may be necessary to remedy the conduct declared to constitute unfair competition;

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS members when compared to the substantial expense and burden of individual prosecution of this litigation;

2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for DEFENDANT; and/or,

B. Adjudications with respect to individual members of the

CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

- 3) In the context of wage litigation because as a practical matter a substantial number of individual class members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A Class Action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3).

36. This Court should permit this Action to be maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), because:

- (a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual members because DEFENDANT's employment practices were uniform and systematically applied with respect to the CALIFORNIA CLASS;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual Class members will avoid asserting their rights individually out of fear of retaliation or adverse impact on

1 their employment;

2 (c) The members of the CALIFORNIA CLASS are so numerous that it is
3 impractical to bring all members of the CALIFORNIA CLASS before
4 the Court;

5 (d) PLAINTIFF, and the other CALIFORNIA CLASS members, will not
6 be able to obtain effective and economic legal redress unless the action
7 is maintained as a Class Action;

8 (e) There is a community of interest in obtaining appropriate legal and
9 equitable relief for the acts of unfair competition, statutory violations
10 and other improprieties, and in obtaining adequate compensation for the
11 injuries which DEFENDANT's actions have inflicted upon the
12 CALIFORNIA CLASS;

13 (f) There is a community of interest in ensuring that the combined assets of
14 DEFENDANT are sufficient to adequately compensate the members of
15 the CALIFORNIA CLASS for the injuries sustained;

16 (g) DEFENDANT had acted or refused to act on grounds generally
17 applicable to the CALIFORNIA CLASS, thereby making final class-
18 wide relief appropriate with respect to the CALIFORNIA CLASS as a
19 whole;

20 (h) The members of the CALIFORNIA CLASS are readily ascertainable
21 from the business records of DEFENDANT. The CALIFORNIA
22 CLASS consists of all DEFENDANT's Class Mebers employed in
23 California during the CALIFORNIA CLASS PERIOD; and,

24 (i) Class treatment provides manageable judicial treatment calculated to
25 bring a efficient and rapid conclusion to all litigation of all wage and
26 hour related claims arising out of the conduct of DEFENDANT as to
27 the members of the CALIFORNIA CLASS.

28 37. DEFENDANT maintains records from which the Court can ascertain and

1 identify by name and job title, each of DEFENDANT's employees who have been
2 systematically, intentionally and uniformly subjected to DEFENDANT's corporate policy,
3 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the
4 complaint to include any additional job titles of similarly situated employees when they have
5 been identified.

6
7 **THE CALIFORNIA LABOR SUB-CLASS**

8 38. PLAINTIFF further brings the Second, Third and Fourth Causes of Action on
9 behalf of a sub-class which consists of all members of the CALIFORNIA CLASS who were
10 employed by DEFENDANT during the period beginning on the date three (3) years prior to
11 the filing of the action and ending on the date as determined by the Court (the
12 "CALIFORNIA LABOR SUB-CLASS PERIOD"), who performed work in excess of eight
13 (8) hours in one day and/or forty (40) hours in one week and/or on the seventh (7th)
14 consecutive day of a workweek and did not receive overtime compensation (the
15 "CALIFORNIA LABOR SUB-CLASS") pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3).

16 39. DEFENDANT, as a matter of corporate policy, practice and procedure,
17 and in violation of the applicable California Labor Code ("Labor Code"), and Industrial
18 Welfare Commission ("IWC") Wage Order Requirements intentionally, knowingly, wilfully,
19 and systematically misclassified the PLAINTIFF and the other members of the
20 CALIFORNIA CLASS and the CALIFORNIA LABOR SUB-CLASS as exempt from
21 overtime wages and other labor laws based on DEFENDANT's comprehensive policies and
22 procedures in order to avoid the payment of overtime wages by misclassifying their positions
23 as exempt from overtime wages and other labor laws. To the extent equitable tolling
24 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT,
25 the CLASS PERIOD should be adjusted accordingly.

26 40. DEFENDANT has intentionally and deliberately created a multi-tiered
27 management structure with numerous levels. PLAINTIFF and the other Class Members
28 primary job duty is providing customer service to guests and working as a team leader for

1 the customer service segment of shift laborers who perform the same work and assisting in
2 the merchandising operation and working as a team leader for the merchandising segment of
3 shift laborers who perform the same work in accordance with DEFENDANTS's established
4 specific procedures and protocols. The job levels and job titles such as "Executive Team
5 Leader of Guest Experience and " "Executive Team Leader of Softlines" were distributed in
6 order to create the superficial appearance of a number of unique jobs, when in fact, these
7 jobs are substantially similar and can be easily grouped together for the purpose of
8 determining whether they were all misclassified. One of DEFENDANT's purposes in
9 creating and maintaining this multi-level job classification scheme is to create an artificial
10 barrier to discovery and class certification for all employees similarly misclassified as
11 exempt. DEFENDANT has uniformly misclassified these CALIFORNIA LABOR SUB-
12 CLASS members as exempt and denied them overtime wages and other benefits to which
13 non-exempt employees are entitled in order to unfairly cheat the competition and unlawfully
14 profit.

15 41. DEFENDANT maintains records from which the Court can ascertain and
16 identify by job title each of DEFENDANT's employees who as CALIFORNIA LABOR
17 SUB-CLASS members have been systematically, intentionally and uniformly misclassified
18 as exempt as a matter of DEFENDANT's corporate policy, practices and procedures.
19 PLAINTIFF will seek leave to amend the complaint to include these additional job titles
20 when they have been identified.

21 42. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
22 members is impracticable.

23 43. Common questions of law and fact exist as to members of the CALIFORNIA
24 LABOR SUB-CLASS, including, but not limited, to the following:

- 25 (a) Whether DEFENDANT unlawfully failed to pay overtime
26 compensation to members of the CALIFORNIA LABOR SUB-CLASS
27 in violation of the California Labor Code and California regulations and
28 the applicable California Wage Order;

- 1 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
2 non-exempt employees entitled to overtime compensation for overtime
3 hours worked under the overtime pay requirements of California law;
- 4 (c) Whether the members of the CALIFORNIA LABOR SUB-CLASS
5 were primarily tasked by DEFENDANT to perform the job of "working
6 foremen;"
- 7 (d) Whether DEFENDANT's policy and practice of classifying the
8 CALIFORNIA LABOR SUB-CLASS members as exempt from
9 overtime compensation and failing to pay the CALIFORNIA LABOR
10 SUB-CLASS members overtime violate applicable provisions of
11 California law;
- 12 (e) Whether DEFENDANT unlawfully failed to keep and furnish
13 CALIFORNIA LABOR SUB-CLASS members with accurate records
14 of overtime hours worked;
- 15 (f) Whether DEFENDANT's policy and practice of failing to pay members
16 of the CALIFORNIA LABOR SUB-CLASS all wages when due within
17 the time required by law after their employment ended violates
18 California law; and,
- 19 (g) The proper measure of damages and penalties owed to the members of
20 the CALIFORNIA LABOR SUB-CLASS.

21 44. DEFENDANT, as a matter of corporate policy, practice and procedure,
22 erroneously classified all of the Class Members as exempt from overtime wages and other
23 labor laws. All of the Class Members, including the PLAINTIFF, performed the same
24 primary functions and were paid by DEFENDANT according to uniform and systematic
25 company procedures, which, as alleged herein above, failed to correctly pay overtime
26 compensation. This business practice was uniformly applied to each and every member of
27 the CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can
28 be adjudicated on a class-wide basis.

1 45. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
2 under California law by:

- 3 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby
4 failing to pay the PLAINTIFF and the members of the CALIFORNIA
5 LABOR SUB-CLASS the correct overtime pay for a workday longer
6 than eight (8) hours, a workweek longer than forty (40) hours, and/or all
7 hours worked on the seventh (7th) consecutive day of a workweek for
8 which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- 9 (b) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
10 when an employee is discharged or quits from employment, the
11 employer must pay the employee all wages due without abatement, by
12 failing to tender full payment and/or restitution of wages owed or in the
13 manner required by California law to the members of the
14 CALIFORNIA LABOR SUB-CLASS who have terminated their
15 employment;
- 16 (c) Violating Cal. Lab. Code § 2802, by failing to reimburse the
17 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
18 CLASS for necessary expenses incurred in the discharge of their job
19 duties for DEFENDANT; and,
- 20 (d) Violating Cal. Lab. Code § 226, by failing to provide the PLAINTIFF
21 and the members of the CALIFORNIA LABOR SUB-CLASS who
22 were improperly classified as exempt with an accurate itemized
23 statement in writing showing the gross wages earned, the net wages
24 earned, all applicable hourly rates in effect during the pay period and
25 the corresponding number of hours worked at each hourly rate by the
26 employee.

27 46. This Class Action meets the statutory prerequisites for the maintenance of a
28 Class Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

- 1 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
2 exceed are so numerous that the joinder of all such persons is
3 impracticable and the disposition of their claims as a class will benefit
4 the parties and the Court;
- 5 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are
6 raised in this Complaint are common to the CALIFORNIA LABOR
7 SUB-CLASS and will apply uniformly to every member of the
8 CALIFORNIA LABOR SUB-CLASS;
- 9 (c) The claims of the representative PLAINTIFF are typical of the claims
10 of each member of the CALIFORNIA LABOR SUB-CLASS.
11 PLAINTIFF, like all the other members of the CALIFORNIA LABOR
12 SUB-CLASS, was improperly classified as exempt and denied overtime
13 pay as a result of DEFENDANT's systematic classification practices.
14 PLAINTIFF and all the other members of the CALIFORNIA LABOR
15 SUB-CLASS sustained economic injuries arising from DEFENDANT's
16 violations of the laws of California; and,
- 17 (d) The representative PLAINTIFF will fairly and adequately represent and
18 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and
19 has retained counsel who are competent and experienced in Class
20 Action litigation. There are no material conflicts between the claims of
21 the representative PLAINTIFF and the members of the CALIFORNIA
22 LABOR SUB-CLASS that would make class certification
23 inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
24 will vigorously assert the claims of all the Class Members.

25 47. In addition to meeting the statutory prerequisites to a Class Action, this Action
26 is properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3),
27 in that:

- 28 (a) Without class certification and determination of declaratory, statutory

1 and other legal questions within the class format, prosecution of
2 separate actions by individual members of the CALIFORNIA LABOR
3 SUB-CLASS will create the risk of:

- 4 1) Inconsistent or varying adjudications with respect to individual
5 members of the CALIFORNIA LABOR SUB-CLASS which
6 would establish incompatible standards of conduct for the parties
7 opposing the CALIFORNIA LABOR SUB-CLASS; or,
- 8 2) Adjudication with respect to individual members of the
9 CALIFORNIA LABOR SUB-CLASS which would as a
10 practical matter be dispositive of interests of the other members
11 not party to the adjudication or substantially impair or impede
12 their ability to protect their interests;

13 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
14 acted or refused to act on grounds generally applicable to the
15 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
16 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
17 whole in that DEFENDANT uniformly classified and treated the Class
18 Members as exempt and, thereafter, uniformly failed to take proper
19 steps to determine whether the Class Members were properly classified
20 as exempt, and thereby denied these employees overtime wages as
21 required by law;

22 (c) Common questions of law and fact predominate as to the members of
23 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices
24 and violations of California law as listed above, and predominate over
25 any question affecting only individual members, and a Class Action is
26 superior to other available methods for the fair and efficient
27 adjudication of the controversy, including consideration of:

- 28 1) The interests of the members of the CALIFORNIA LABOR

1 SUB-CLASS in individually controlling the prosecution or
2 defense of separate actions in that the substantial expense of
3 individual actions will be avoided to recover the relatively small
4 amount of economic losses sustained by the individual
5 CALIFORNIA LABOR SUB-CLASS members when compared
6 to the substantial expense and burden of individual prosecution
7 of this litigation;

8 2) Class certification will obviate the need for unduly duplicative
9 litigation that would create the risk of:

10 A. Inconsistent or varying adjudications with respect to
11 individual members of the CALIFORNIA LABOR SUB-
12 CLASS, which would establish incompatible standards of
13 conduct for DEFENDANT; and/or,

14 B. Adjudications with respect to individual members of the
15 CALIFORNIA LABOR SUB-CLASS would as a
16 practical matter be dispositive of the interests of the other
17 members not parties to the adjudication or substantially
18 impair or impede their ability to protect their interests;

19 3) In the context of wage litigation because a substantial number of
20 individual class members will avoid asserting their legal rights
21 out of fear of retaliation by DEFENDANT, which may adversely
22 affect an individual's job with DEFENDANT or with a
23 subsequent employer, the Class Action is the only means to
24 assert their claims through a representative; and,

25 4) A Class Action is superior to other available methods for the fair
26 and efficient adjudication of this litigation because class
27 treatment will obviate the need for unduly and unnecessary
28 duplicative litigation that is likely to result in the absence of

1 certification of this Action pursuant to Fed. R. Civ. Proc.
2 23(b)(2) and/or (3).

3 48. This Court should permit this Action to be maintained as a Class Action
4 pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), because:

- 5 (a) The questions of law and fact common to the CALIFORNIA LABOR
6 SUB-CLASS predominate over any question affecting only individual
7 members;
- 8 (b) A Class Action is superior to any other available method for the fair
9 and efficient adjudication of the claims of the members of the
10 CALIFORNIA LABOR SUB-CLASS because in the context of
11 employment litigation a substantial number of individual Class
12 Members will avoid asserting their rights individually out of fear of
13 retaliation or adverse impact on their employment;
- 14 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
15 numerous that it is impractical to bring all members of the
16 CALIFORNIA LABOR SUB-CLASS before the Court;
- 17 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
18 members, will not be able to obtain effective and economic legal
19 redress unless the action is maintained as a Class Action;
- 20 (e) There is a community of interest in obtaining appropriate legal and
21 equitable relief for the acts of unfair competition, statutory violations
22 and other improprieties, and in obtaining adequate compensation for the
23 damages and injuries which DEFENDANT's actions have inflicted
24 upon the CALIFORNIA LABOR SUB-CLASS;
- 25 (f) There is a community of interest in ensuring that the combined assets of
26 DEFENDANT are sufficient to adequately compensate the members of
27 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 28 (g) DEFENDANT has acted or refused to act on grounds generally

1 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby
2 making final class-wide relief appropriate with respect to the
3 CALIFORNIA LABOR SUB-CLASS as a whole;

- 4 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
5 ascertainable from the business records of DEFENDANT. The
6 CALIFORNIA LABOR SUB-CLASS consists of those Class Members
7 who worked overtime hours and who were not paid overtime; and,
8 (i) Class treatment provides manageable judicial treatment calculated to
9 bring a efficient and rapid conclusion to all litigation of all wage and
10 hour related claims arising out of the conduct of DEFENDANT.

11
12 **JURISDICTION AND VENUE**

13 49. This Court has jurisdiction over the PLAINTIFF's federal claims pursuant to 28
14 U.S.C. § 1331 and supplemental jurisdiction of the PLAINTIFF's state law claims pursuant to
15 28 U.S.C. § 1367.

16 50. Further, with respect to the state law class claims, these state law class claims
17 are brought as a Class Action pursuant to Fed. R. Civ. Proc, Rule 23 on behalf of a class that
18 exceeds 100 persons, that involves more than \$5,000,000 in controversy, and where the
19 citizenship of at least one member of the class is diverse from that of DEFENDANT. As a
20 result, this Court also has original jurisdiction over the state law class claims under 28
21 U.S.C. § 1332 (CAFA Jurisdiction).

22 51. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because: (i)
23 DEFENDANT is subject to personal jurisdiction in this District and therefore resides in this
24 District; (ii) DEFENDANT maintains offices or facilities in this District; and, (iii)
25 DEFENDANT committed the wrongful conduct against members of the CALIFORNIA
26 CLASS in this District.

FIRST CAUSE OF ACTION

For Unlawful Business Practices

[Cal. Bus. And Prof. Code §§ 17200 *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS and against All Defendants)

52. PLAINTIFF, and the CALIFORNIA CLASS members, reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 51 of this Complaint.

53. DEFENDANT is a "persons" as that term is defined under Cal. Bus. and Prof. Code § 17021.

54. California Business & Professions Code §§ 17200 *et seq.* (the "UCL") defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

California Business & Professions Code § 17203.

55. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to provisions of the Wage Orders, the California Labor Code, the regulations of the Department of Labor and the opinions of the Department of Labor Standards Enforcement, for which this Court should issue declaratory, and other equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, as may be necessary to prevent and remedy the conduct held to constitute unfair competition.

56. Throughout the CLASS PERIOD, it was also DEFENDANT's uniform policy and practice to make unavailable mandatory meal and rest breaks to the PLAINTIFF and the Class Members. DEFENDANT's uniform practice requires the PLAINTIFF and the Class

1 Members to work continuously throughout the workday without being supplied meal and/or
2 rest periods in accordance with the number of hours they worked. At all relevant times
3 during the CLASS PERIOD, DEFENDANT failed to provide any compensated work time
4 for interrupting and/or failing to provide such breaks to the PLAINTIFF and the Class
5 Members.

6 57. Therefore, the PLAINTIFF demands on behalf of herself and on behalf of
7 each Class Member, one (1) hour of pay for each workday in which an off-duty meal period
8 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each
9 workday in which a second off-duty meal period was not timely provided for each ten (10)
10 hours of work.

11 58. PLAINTIFF further demands on behalf of herself and on behalf of each Class
12 Member, one (1) hour of pay for each workday in which a rest period was not timely
13 provided as required by law.

14 59. By and through the unfair and unlawful business practices described herein
15 above, DEFENDANT has obtained valuable property, money, and services from the
16 PLAINTIFF, and the other members of the CALIFORNIA CLASS, and has deprived them
17 of valuable rights and benefits guaranteed by law, all to their detriment and to the benefit of
18 DEFENDANT so as to allow DEFENDANT to unfairly compete. Declaratory and equitable
19 relief is necessary to prevent and remedy this unfair competition.

20 60. All the acts described herein as violations of, among other things, the
21 California Labor Code, California Code of Regulations, and the Industrial Welfare
22 Commission Wage Orders, are unlawful, are in violation of public policy, are immoral,
23 unethical, oppressive, and unscrupulous, and are likely to deceive employees, as herein
24 alleged, and thereby constitute deceptive, unfair and unlawful business practices in violation
25 of Cal. Bus. and Prof. Code §§ 17200 *et seq.*

26 61. PLAINTIFF, and the CALIFORNIA CLASS members, are further entitled to,
27 and do, seek a declaration that the above described business practices are deceptive unfair
28 and/or unlawful.

62. The practices herein alleged presently continue to occur unabated. As a result of the unfair and unlawful business practices described above, the PLAINTIFF, and the CALIFORNIA CLASS members, have suffered legal and economic harm.

SECOND CAUSE OF ACTION

For Failure To Pay Overtime Compensation

[Cal. Lab. Code §§ 510, 551, 552, 1194 and 1198]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS)

63. PLAINTIFF, and the CALIFORNIA LABOR SUB-CLASS members, reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 62 of this Complaint.

64. Cal. Lab. Code § 510 states in relevant part:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

65. Cal. Lab. Code § 551 states that, "Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven."

66. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his employees to work more than six days in seven."

67. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the employee's regular hourly rate shall be 1/40th of the employee's weekly salary."

68. Cal. Lab. Code § 1194 states:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime

1 compensation, including interest thereon, reasonable attorney's fees, and costs
2 of suit.

3 69. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the
4 standard conditions of labor fixed by the commission shall be the maximum hours of work
5 and the standard conditions of labor for employees. The employment of any employee for
6 longer hours than those fixed by the order or under conditions of labor prohibited by the
7 order is unlawful."

8 70. In addition, Labor Code Section 558 provides:

9 (a) Any employer or other person acting on behalf of an employer
10 who violates, or causes to be violated, a section of this chapter or any
11 provision regulating hours and days of work in any order of the Industrial
12 Welfare Commission shall be subject to a civil penalty as follows:

13 (1) For any initial violation, fifty dollars (\$50) for each underpaid
14 employee for each pay period for which the employee was underpaid in
15 addition to an amount sufficient to recover underpaid wages.

16 (2) For each subsequent violation, one hundred dollars (\$100) for each
17 underpaid employee for each pay period for which the employee was
18 underpaid in addition to an amount sufficient to recover underpaid wages.

19 (3) Wages recovered pursuant to this section shall be paid to the
20 affected employee.

21 (b) If upon inspection or investigation the Labor Commissioner determines
22 that a person had paid or caused to be paid a wage for overtime work in
23 violation of any provision of this chapter, or any provision regulating hours
24 and days of work in any order of the Industrial Welfare Commission, the
25 Labor Commissioner may issue a citation. The procedures for issuing,
26 contesting, and enforcing judgments for citations or civil penalties issued by
27 the Labor Commissioner for a violation of this chapter shall be the same as
28 those set out in Section 1197.1.

(c) The civil penalties provided for in this section are in addition to any other
civil or criminal penalty provided by law.

71. DEFENDANT has intentionally and uniformly designated certain employees
as "exempt" employees, by their job title and without regard to DEFENDANT's realistic
expectations and actual overall requirements of the job, including the PLAINTIFF and the
other members of the CALIFORNIA LABOR SUB-CLASS who worked on the production
side of DEFENDANT's business. This was done in an illegal attempt to avoid payment of
overtime wages and other benefits in violation of the Cal. Lab. Code and Industrial Welfare
Commission requirements.

72. For an employee to be exempt as a bona fide "executive," all the following
criteria must be met and DEFENDANT has the burden of proving that:

- 1 (a) The employee's primary duty must be management of the enterprise, or of a
- 2 customarily recognized department or subdivision; and,
- 3 (b) The employee must customarily and regularly direct the work of at least two
- 4 (2) or more other employees; and,
- 5 (c) The employee must have the authority to hire and fire, or to command
- 6 particularly serious attention to his or his recommendations on such actions
- 7 affecting other employees; and,
- 8 (d) The employee must customarily and regularly exercise discretion and
- 9 independent judgment; and,
- 10 (e) The employee must be primarily engaged in duties which meet the test of
- 11 exemption.

12 No member of the CALIFORNIA LABOR SUB-CLASS was or is an executive because
 13 they all fail to meet the requirements of being an "executive" within the meaning of the
 14 applicable Wage Order.

15 73. For an employee to be exempt as a bona fide "administrator," all of the
 16 following criteria must be met and DEFENDANT has the burden of proving that:

- 17 (a) The employee must perform office or non-manual work directly related to
- 18 management policies or general business operation of the employer; and,
- 19 (b) The employee must customarily and regularly exercise discretion and
- 20 independent judgment; and,
- 21 (c) The employee must regularly and directly assist a proprietor or an exempt
- 22 administrator; or,
- 23 (d) The employee must perform, under only general supervision, work requiring
- 24 special training, experience, or knowledge, or,
- 25 (e) The employee must execute special assignments and tasks under only general
- 26 supervision; and,
- 27 (f) The employee must be primarily engaged in duties which meet the test of
- 28 exemption.

1 No member of the CALIFORNIA LABOR SUB-CLASS was or is an administrator because
2 they all fail to meet the requirements for being an "administrator" under the applicable Wage
3 Order.

4 74. The Industrial Welfare Commission, in Wage Order 1-2001 and 4-2001, at
5 section (1)(A)(3)(h), and Labor Code § 515 also set forth the requirements which must be
6 complied with to place an employee in the "professional" exempt category. For an employee
7 to be exempt as a bona fide "professional," all the following criteria must be met and
8 DEFENDANT has the burden of proving that:

9 (a) The employee is primarily engaged in an occupation commonly recognized as
10 a learned or artistic profession. For the purposes of this subsection, "learned
11 or artistic profession" means an employee who is primarily engaged in the
12 performance of:

- 13 1) Work requiring knowledge of an advanced type in a field or science or
14 learning customarily acquired by a prolonged course of specialized
15 intellectual instruction and study, as distinguished from a general
16 academic education and from an apprenticeship, and from training in
17 the performance of routine mental, manual, or physical processes, or
18 work that is an essential part or necessarily incident to any of the above
19 work; or,
- 20 2) Work that is original and creative in character in a recognized field of
21 artistic endeavor, and the result of which depends primarily on the
22 invention, imagination or talent of the employee or work that is an
23 essential part of or incident to any of the above work; and,
- 24 3) Whose work is predominately intellectual and varied in character (as
25 opposed to routine mental, manual, mechanical, or physical work) and
26 is of such character cannot be standardized in relation to a given period
27 of time.

28 (b) The employee must customarily and regularly exercise discretion and

1 independent judgment; and,

- 2 (c) The employee earns a monthly salary equivalent to no less than two (2) times
3 the state minimum wage for full-time employment.

4 No member of the CALIFORNIA LABOR SUB-CLASS was or is a professional because
5 they all fail to meet the requirements of being a "professional" within the meaning of the
6 applicable Wage Order.

7 75. PLAINTIFF, and the CALIFORNIA LABOR SUB-CLASS members, do not
8 fit the definition of an exempt executive, administrative, or professional employee because:

- 9 (a) They did not work as executives or administrators; and,

- 10 (b) The professional exemption does not apply to the PLAINTIFF, nor to the other
11 members of the CALIFORNIA LABOR SUB-CLASS because they did not
12 meet all the applicable requirements to work under the professional exemption
13 for the reasons set forth above in this Complaint.

14 76. During the CLASS PERIOD, the PLAINTIFF, and the other members of the
15 CALIFORNIA LABOR SUB-CLASS, worked more than eight (8) hours in a workday, forty
16 (40) hours in a workweek, and/or worked on the seventh (7th) consecutive day of a
17 workweek.

18 77. At all relevant times, DEFENDANT failed to pay the PLAINTIFF, and the
19 other members of the CALIFORNIA LABOR SUB-CLASS, overtime compensation for the
20 hours they have worked in excess of the maximum hours permissible by law as required by
21 Cal. Lab. Code §§ 510 and 1198, even though the PLAINTIFF, and the other members of
22 the CALIFORNIA LABOR SUB-CLASS, were regularly required to work, and did in fact
23 work, overtime hours.

24 78. By virtue of DEFENDANT's unlawful failure to pay additional compensation
25 to the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, for
26 their overtime hours, the PLAINTIFF, and the other members of the CALIFORNIA LABOR
27 SUB-CLASS, have suffered, and will continue to suffer, an economic injury in amounts
28 which are presently unknown to them and which will be ascertained according to proof at

1 trial.

2 79. DEFENDANT knew or should have known that the PLAINTIFF, and the
3 other members of the CALIFORNIA LABOR SUB-CLASS, were misclassified as exempt
4 and DEFENDANT systematically elected, either through intentional malfeasance or gross
5 nonfeasance, not to pay them for their overtime labor as a matter of uniform corporate
6 policy, practice and procedure.

7 80. Therefore, the PLAINTIFF, and the CALIFORNIA LABOR SUB-CLASS
8 members, request recovery of overtime compensation according to proof, interest, costs, as
9 well as the assessment of any statutory penalties against DEFENDANT, in a sum as
10 provided by the Cal. Lab. Code and/or other statutes. To the extent overtime compensation
11 is determined to be owed to members of the CALIFORNIA LABOR SUB-CLASS who
12 have terminated their employment, these employees would also be entitled to waiting time
13 penalties under Cal. Lab. Code § 203, which penalties are sought herein. Further, the
14 PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, are
15 entitled to seek and recover statutory costs.

16 81. In performing the acts and practices herein alleged in violation of labor laws
17 and refusing to provide the requisite overtime compensation, DEFENDANT acted and
18 continues to act intentionally, oppressively, and maliciously toward the PLAINTIFF, and
19 toward the other members of the CALIFORNIA LABOR SUB-CLASS, with a conscious
20 and utter disregard of their legal rights, or the consequences to them, and with the despicable
21 intent of depriving them of their property and legal rights and otherwise causing them injury
22 in order to increase corporate profits at the expense of the PLAINTIFF and the members of
23 the CALIFORNIA CLASS.

24
25 **THIRD CAUSE OF ACTION**

26 **For Failure to Provide Accurate Itemized Statements**

27 **[Cal. Lab. Code § 226]**

28 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS)**

82. PLAINTIFF, and the CALIFORNIA LABOR SUB-CLASS members, reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 81 of this Complaint.

83. Cal. Lab. Code § 226 provides that an employer must furnish employees with an "accurate itemized" statement in writing showing:

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- (8) the name and address of the legal entity that is the employer, and
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

84. At all times relevant herein, DEFENDANT violated Cal. Lab. Code § 226, in that DEFENDANT failed to provide an accurate wage statement in writing that properly and accurately itemized the number of hours worked by the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS at the effective regular rates of pay and the effective overtime rates of pay.

85. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing damages to the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the true hours worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each violation in subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in

1 no event more than \$4,000.00 for the PLAINTIFF and each respective member of the
2 CALIFORNIA LABOR SUB-CLASS herein).

3
4 **FOURTH CAUSE OF ACTION**

5 **For Failure to Reimburse Employees for Necessary Expenses**

6 **[Cal. Lab. Code § 2802]**

7 **(By PLAINTIFF and the CLASS and against DEFENDANT)**

8 86. PLAINTIFF, and the Class Members, reallege and incorporate by this reference,
9 as though fully set forth herein, paragraphs 1 through 85 of this Complaint.

10 87. Cal. Lab. Code § 2802 provides, in relevant part, that:

11 An employer shall indemnify his or her employee for all necessary expenditures
12 or losses incurred by the employee in direct consequence of the discharge of his
13 or her duties, or of his or her obedience to the directions of the employer, even
though unlawful, unless the employee, at the time of obeying the directions,
believed them to be unlawful.

14 88. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
15 failing to indemnify and reimburse the PLAINTIFF, and all the Class Members for expenses
16 incurred in the discharge of their job duties for DEFENDANT. In particular, DEFENDANT
17 systematically insisted that all Class Members purchase TARGET's branded merchandise from
18 its online employee "Bullseye" shop the wearing of which was necessary to fulfill the
19 employees' job duties. The Bullseye shop clothing was only purchased for wearing at work for
20 DEFENDANT. As a result, the Class Members patronized DEFENDANT's online shop in the
21 purchase of its company clothing for work purposes only. Therefore, the Team Leaders
22 sustained expenses and other losses as a result of TARGET's uniform policy to require
23 employees to use its online shop to purchase company clothing for work purposes. TARGET
24 also failed to reimburse the PLAINTIFF and the other Class Members for personal vehicle
25 usage and the expense of gas which was required by DEFENDANT to travel to and from
26 DEFENDANT's retail store locations for training. DEFENDANT is estopped by
27 DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were
28 necessary expenditures incurred by the PLAINTIFF and the Class Members, DEFENDANT

1 failed to indemnify and reimburse the PLAINTIFF and the Class Members for these expenses
 2 as an employer is required to do under the laws and regulations of California.

3 89. Thus, the PLAINTIFF and the Class Members were forced by the expectation of
 4 DEFENDANT and DEFENDANT's unwritten policy to contribute to the expenses of
 5 DEFENDANT's business, which expenses must be refunded by DEFENDANT to each member
 6 of the CLASS.

7 90. Cal. Lab. Code § 2802(b) and (c) provide for interest at the statutory post
 8 judgment rate of 10% simple interest per annum from the date of the expenditure plus attorneys'
 9 fees to collect reimbursement.

10 91. PLAINTIFF, therefore, demands reimbursement for expenditures or losses
 11 incurred by her and the Class Members in the discharge of her job duties for DEFENDANT,
 12 or their obedience to the directions of DEFENDANT with interest at the statutory rate and costs
 13 under Cal. Labor Code § 2802.

14 15 FIFTH CAUSE OF ACTION

16 **Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* ("FLSA")**

17 **(By PLAINTIFF and the COLLECTIVE CLASS and against All Defendants)**

18 92. PLAINTIFF, and the COLLECTIVE CLASS members, reallege and
 19 incorporate by this reference, as though fully set forth herein, paragraphs 1 through 91 of this
 20 Complaint.

21 93. DEFENDANT is engaged in communication, business, and transmission between
 22 the states, and is, therefore, engaged in commerce within the meaning of 29 U.S.C. § 203(b).

23 94. PLAINTIFF further brings the Fourth Cause of Action on behalf of a
 24 COLLECTIVE CLASS in accordance with 29 U.S.C. § 216 which consists of all the Class
 25 Members employed in California by DEFENDANT during the period three (3) years prior to
 26 the filing of the complaint and ending on the date as determined by the Court, and who
 27 performed work in excess of forty (40) hours in a workweek (the "COLLECTIVE CLASS").

28 95. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to willful

1 violations of the FLSA.

2 96. 29 U.S.C. § 207(a)(1) provides in pertinent part:

3 Except as otherwise provided in this section, no employer shall employ any of his
4 employees who in any workweek is engaged in commerce or in the production of
5 goods for commerce, or is employed in an enterprise engaged in commerce or in
6 the production of goods for commerce, for a workweek longer than forty hours
unless such employee receives compensation for his employment in excess of the
hours above specified at a rate not less than one and one-half times the regular
rate at which he is employed.

7 97. Section 213(a)(1) of the FLSA provides that the overtime pay requirement does
8 not apply to:

9 any employee employed in a bona fide executive, administrative, or professional
10 capacity (including any employee employed in the capacity of academic
11 administrative personnel or teacher in elementary or secondary schools), or in the
12 capacity of outside salesman (as such terms are defined and delimited from time
13 to time by regulations of the Secretary, subject to the provisions of the
14 Administrative Procedure Act [5 USCS §§ 551 et seq.] except [that] an employee
15 of a retail or service establishment shall not be excluded from the definition of
employee employed in a bona fide executive or administrative capacity because
of the number of hours in his workweek which he devotes to activities not
directly or closely related to the performance of executive or administrative
activities, if less than 40 per centum of his hours worked in the workweek are
devoted to such activities).

16 98. DEFENDANT has willfully engaged in a widespread pattern and practice of
17 violating the provisions of the FLSA, as detailed above, by uniformly designating certain
18 employees as "exempt" employees, by their job title and without regard to DEFENDANT's
19 realistic expectations and actual overall requirements of the job, including the PLAINTIFF and
20 the other members of the COLLECTIVE CLASS who worked on the production side of
21 DEFENDANT's business enterprise. This was done in an illegal attempt to avoid payment of
22 overtime wages and other benefits in violation of the FLSA and Code of Federal Regulations
23 requirements.

24 99. Pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, the
25 PLAINTIFF and the other members of the COLLECTIVE CLASS are entitled to overtime
26 compensation for all overtime hours actually worked, at a rate not less than one and one-half
27 times their regular rate of pay for all hours worked in excess of forty (40) hours in any
28 workweek. DEFENDANT's failure to pay overtime wages as required by federal law was
willful and not in good faith.

1 100. 29 C.F.R. 541.2 establishes that a job title alone is insufficient to establish the
2 exempt status of an employee. The exempt or nonexempt status of any particular employee
3 must be determined on the basis of whether the employee's salary and duties meet the
4 requirements of the regulations in this part.

5 101. The exemptions of the FLSA as listed in section 13(a), and as explained by 29
6 C.F.R. 541.3, do not apply to the PLAINTIFF and the other members of the COLLECTIVE
7 CLASS, because their work consists of non-management, production line labor performed with
8 skills and knowledge acquired from on-the-job training, rather than from the prolonged course
9 of specialized intellectual instruction required for exempt learned professional employees such
10 as medical doctors, architects and archeologists. Class Members either do not hold an advanced
11 degree, have not taken any prolonged course of specialization, and/or have attained the vast
12 majority of the skills they use as employees of DEFENDANT from on-the-job training.

13 102. For an employee to be exempt as a bona fide "executive," all the following
14 criteria must be met and DEFENDANT has the burden of proving that:

- 15 (a) The employee's primary duty must be management of the enterprise, or of a
16 customarily recognized department or subdivision;
- 17 (b) The employee must customarily and regularly direct the work of at least two (2)
18 or more other employees;
- 19 (c) The employee must have the authority to hire and fire, or to command particularly
20 serious attention to his or his recommendations on such actions affecting other
21 employees; and,
- 22 (d) The employee must be primarily engaged in duties which meet the test of
23 exemption.

24 No member of the COLLECTIVE CLASS was or is an executive because they all fail to meet
25 the requirements of being an "executive " under section 13 of the FLSA and 29 C.F.R. 541.100.
26 Moreover, none of the members of the COLLECTIVE CLASS managed the work of two or
27 more other employees in a customarily recognized department or subdivision of the employer,
28 and whose recommendations as to the hiring, firing, advancement, promotion or other change

1 of status of the other employees were given particular weight and therefore, they do not qualify
2 for the executive exemption.

3 103. For an employee to be exempt as a bona fide "administrator," all of the following
4 criteria must be met and DEFENDANT has the burden of proving that:

- 5 (a) The employee must perform office or non-manual work directly related to
6 management or general business operation of the employer or the employer's
7 customers;
- 8 (b) The employee must customarily and regularly exercise discretion and independent
9 judgment with respect to matters of significance; and,
- 10 (c) The employee must regularly and directly assist a proprietor or an exempt
11 administrator; or,
- 12 (d) The employee must perform under only general supervision, work requiring
13 special training, experience, or knowledge; and,
- 14 (e) The employee must be primarily engaged in duties which meet the test of
15 exemption.

16 No member of the COLLECTIVE CLASS was or is an administrator because they all fail to
17 meet the requirements of for being an "administrator" under section 13(a) of the FLSA and 29
18 C.F.R. 541.300.

19 104. For an employee to be exempt as a bona fide "professional", DEFENDANT has
20 the burden of proving that the primary duty of the employee is the performance of work that:

- 21 (a) Requires knowledge of an advanced type in a field of science or learning
22 customarily acquired by a prolonged course of specialized intellectual instruction;
23 or
- 24 (b) Requires invention, imagination, originality or talent in a recognized field of
25 artistic or creative endeavor.

26 No member of the COLLECTIVE CLASS was or is a professional because they all fail to meet
27 the requirements of being an "professional" within the meaning of 29 CFR 541.300. Further,
28 the PLAINTIFF and the other Class Members operated under intense scrutiny from management

1 and are strictly dictated by written guidelines and standardized procedures.

2 105. During the COLLECTIVE CLASS PERIOD, the PLAINTIFF, and the other
3 members of the COLLECTIVE CLASS, worked more than forty (40) hours in a workweek.

4 106. At all relevant times, DEFENDANT failed to pay the PLAINTIFF, and the other
5 members of the COLLECTIVE CLASS, overtime compensation for the hours they have worked
6 in excess of the maximum hours permissible by law as required by section 207 of the FLSA,
7 even though the PLAINTIFF, and the other members of the COLLECTIVE CLASS, were
8 regularly required to work, and did in fact work, overtime hours.

9 107. For purposes of the Fair Labor Standards Act, the employment practices of
10 DEFENDANT were and are uniform throughout California in all respects material to the claims
11 asserted in this Complaint.

12 108. There are no other exemptions applicable to the PLAINTIFF and/or to the
13 members of the COLLECTIVE CLASS.

14 109. As a result of DEFENDANT's failure to pay overtime compensation for
15 overtime hours worked, as required by the FLSA, the PLAINTIFF and the members of the
16 COLLECTIVE CLASS were damaged in an amount to be proved at trial.

17 110. Therefore, the PLAINTIFF demands that she and the members of the
18 COLLECTIVE CLASS be paid overtime compensation as required by the FLSA for every hour
19 of overtime worked in any workweek for which they were not compensated, plus interest and
20 statutory costs as provided by law.

21
22 **PRAYER**

23 WHEREFOR, the PLAINTIFF prays for judgment against each Defendant, jointly
24 and severally, as follows:

25 1. On behalf of the CALIFORNIA CLASS:

26 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
27 CLASS as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3);

28 B) An order requiring DEFENDANT to correctly calculate and pay all wages and

all sums unlawfully withheld from compensation due to the PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

C) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to the PLAINTIFF and to the other members of the CALIFORNIA CLASS according to proof.

2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

A) That the Court certify the Second, Third and Fourth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3);

B) Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA CLASS PERIODS plus interest thereon at the statutory rate;

C) The wages of all terminated employee from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203; and,

D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226.

3. On behalf of the COLLECTIVE CLASS:

A) That the Court certify the Fifth Cause of Action asserted by the COLLECTIVE CLASS as an opt-in Class Action under 29 U.S.C. § 216(b);

B) Issue a declaratory finding that DEFENDANT's acts, policies, practices and procedures complained of herein violated provisions of the Fair Labor

Standards Act; and

C) That the PLAINTIFF and the other members of the COLLECTIVE CLASS recover compensatory damages and an equal amount of liquidated damages as provided under the law and in 29 U.S.C. § 216(b).

4. On all claims:

A) An award of interest, including prejudgment interest at the legal rate;

B) An award of penalties and cost of suit, as allowable under the law. Neither this prayer nor any other allegation or prayer in this Complaint is to be construed as a request, under any circumstance, that would result in a request for attorneys' fees or costs available under Cal. Lab. Code § 218.5; and,

C) Such other and further relief as the Court deems just and equitable.

Dated: February 11, 2011

BLUMENTHAL, NORDREHAUG & BHOWMIK

By:

Norman B. Blumenthal
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: February 11, 2011

BLUMENTHAL, NORDREHAUG & BHOWMIK

By: 

Norman B. Blumenthal
Attorneys for Plaintiff